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DEL HARDY, ESQ. (SBN 1122)
HARDY & ASSOCIATES
98 & 96 Winter Street
Reno, Nevada 89503
(775) 786-5800

Attorney for Albert G. Garland

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF NEVADA
NORTHERN DIVISION

IN RE: ALBERT G. GARLAND,
Debtor,
Social Security No. 564-74-0632

Case No. BK-N-01-33620

CHAPTER 11

Motion No.:

**-EX PARTE-
MOTION TO SET ASIDE DISMISSAL OF
CASE UNTIL PROPER NOTICE IS SENT
TO ALL PARTIES OF INTEREST
INCLUDING DEBTOR**

Hearing Date:

Hearing Time:

COMES NOW, Debtor, ALBERT G. GARLAND, by and through his attorney, DEL HARDY, ESQ., and hereby requests this court to set aside the dismissal of case filed by this court on May 23, 2002, until such time as all parties of interest have received notice of that dismissal or otherwise enter an order which serves equity and justice to preserve the Debtor's interest in his home which has been foreclosed on in part because the Debtor was unaware of the Order dismissing the case.

This Motion is made pursuant to the Bankruptcy Rules and Codes and in particular 11 U.S.C 105 which empowers this court to issue any order that is necessary or appropriate to carry out the provisions of the title and to prevent any abuse of process.

This court entered its order on May 23, 2002. That order is attached hereto as Exhibit "A". The court will note that Debtor's attorney did not sign off on that order. Additionally, the order was never sent out and served upon anyone and there is no mailing matrix or Notice of Entry of Order on file in the case.

1 Neither the Debtor or Debtor's counsel were ever advised of the Order Granting Dismissal until a copy was
2 obtained after a foreclosure occurred on Debtor's home. A foreclosure sale that the Debtor only found out
3 about after the foreclosure occurred.

4 On June 12, 2002, Homeside Lending somehow found out about the court's May 23, 2002 Order of
5 Dismissal and held a foreclosure sale on Debtor's home at 321 Ski Way, #83, Incline Village, Nevada,
6 89450. This is Debtor's home and primary residence and has approximately \$100,000.00 worth of equity
7 which is now gone away. Debtor had filed on June 19, 2002, a Faulty Sale Notice with the Washoe County
8 Recorder's Office and to date, Debtor has not been asked to be moved from his home.

9 Homeside Lending however, refuses to set aside a foreclosure sale, therefore, it is necessary to
10 respectfully ask this court to issue an order that provides that the Dismissal signed of May 23, 2002 is not
11 effective until Notice of Entry of Order is sent to all interested parties including Debtor and Debtor's
12 counsel. By doing so, the sale would then become void and Debtor could take the appropriate steps to tender
13 the payments that Debtor has been ready, willing and able to do since March of 2002. The court will note
14 in Exhibit "B", debtor tendered January and February 2002 payments which were accepted. No additional
15 notices were ever sent of any pending foreclosure.

16 Debtor's counsel has provided a copy of this to parties requesting special Notice that being James
17 L. Pagano, Esq. for Creditor Mahoney, Mortgage Companies and the U.S. Trustee's Office.

18 DATED this 3 day of July, 2002

19
20
21 
22 DEL HARDY, ESQ.

23 Attorney for Debtor ALBERT G. GARLAND
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Bankr.P. 9014, 7004 and Fed.R.Civ.P.4b(g), I, Debbie Roberts, hereby swear under penalty of perjury that I am over the age of 18, not a party to the within action, and that on the 3rd day of July, 2002, I served the foregoing documents by mailing a copy thereof by first class mail to:

James L. Pagano, Esq.
Law Office of James L. Pagano
96 North Third Street, Suite 620
San Jose, CA 95112

HomeSide Lending, Inc.
P.O. Box 44255
Jacksonville, FL 32231-4255

HomeSide Lending, Inc.
P.O. Box 7198
Pasadena, CA 91109-7198

Ginny Tillmanshofer
1309 Sandpiper
Palm Desert, CA 92260

Malcolm, Cisneros & Houser
Trustee Corps
1401 N. Batavia Street
First Floor, Suite 102
Orange, CA 92867

Nicholas Strozza,
Assistant U.S. Trustee
300 Booth Street, Room 2129
Reno, Nevada 89509

Dated this 3rd day of July, 2002.

Debbie Roberts
Debbie Roberts

MAY 15 REC'D

1 JAMES L. PAGANO, ESQ (CA State Bar No. 098185)
 2 LAW OFFICES OF JAMES L. PAGANO
 3 96 North Third Street, Suite 620
 4 San Jose, CA 95112
 5 Telephone: (408) 999-5678
 6 Facsimile: (408) 999-5684

RECEIVED AND FILED
 02 MAY 23 AM 9:34
 U.S. BANKRUPTCY COURT
 PATRICIA GRAY, CLERK

Attorneys for Movants, Creditors, the ESTATE OF
 MERRILL J. MALONEY, by Sharon R. Maloney,
 its Personal Representative, and SHARON R.
 MALONEY, an individual

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 9 IN THE UNITED STATES BANKRUPTCY COURT
 10 IN AND FOR THE DISTRICT OF NEVADA
 11 NORTHERN DIVISION

12 IN RE ALBERT G. GARLAND,
 13

Case No. BK-N-01-33620

14 Debtor,

CHAPTER 11

15 Social Security No. 564-74-0632

Motion No.:

16 ORDER GRANTING DISMISSAL OF
 17 CHAPTER 11 CASE, WITH PREJUDICE
 18 TO ITS BEING REFILED, AND STAYING,
 19 AS MOOT, OBJECTIONS TO
 20 DISCHARGEABILITY OF CERTAIN
 21 DEBTS OWED BY DEBTOR AND
 22 DEBTOR'S CLAIM TO A HOMESTEAD
 23 EXEMPTION

Hearing Date: March 11, 2002

Hearing Time: 10:00 a.m.

Courtroom No.: 1161

_____/ Judge: Honorable Gregg W. Zive

24 The Motion of Movants/Creditors, the Estate of Merrill J. Maloney and Sharon R. Maloney,
 25 an individual (collectively "MALONEY"), seeking an order dismissing the above-referenced case
 26 ("this Motion to Dismiss" or "the Motion"), with prejudice to its being refiled, initially came on for
 27 hearing before this Court on February 1, 2002. At that time, this Court, acknowledging the principal
 28 argument raised in response to the Motion by Debtor, Albert G. Garland ("DEBTOR"), to wit, that

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 ORDER GRANTING DISMISSAL OF CHAPTER 11 CASE, WITH PREJUDICE TO ITS BEING
 REFILED, AND STAYING, AS MOOT, OBJECTIONS TO DISCHARGEABILITY OF CERTAIN
 DEBTS OWED BY DEBTOR AND DEBTOR'S CLAIM TO A HOMESTEAD EXEMPTION

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1 the Motion was filed and served before the expiration of the period during which DEBTOR could
 2 exclusively offer, for approval, a Disclosure Statement, pursuant to 11 U.S.C. §1125, including a
 3 prospective confirmable Plan of Reorganization ("the Plan"), and in order to permit DEBTOR this
 4 opportunity, continued the hearing on the Motion to March 11, 2002, approximately one month after
 5 that exclusivity period expired. The Court further ordered that DEBTOR file a proposed Disclosure
 6 Statement and Plan on or before February 15, 2002. Additionally And, the Court announced on
 7 February 1, that the further hearing of this Motion would trail the Court's consideration of the
 8 proposed Disclosure Statement and Plan as, thereafter, filed by DEBTOR.

9 On or about March 11, 2002, DEBTOR appeared at the hearing on this motion by and
 10 through his counsel of record, the Law Offices of Del L. Hardy by attorneys, Del L. Hardy, Esq. and
 11 Teresa B. McKee, Esq.; the United States Trustee appeared by and through an Assistant United
 12 States Trustee, Nicholas Strozza, Esq.; Creditors, the Estate of Merrill J. Maloney and Sharon R.
 13 Maloney (collectively "MALONEY") appeared by and through their counsel of record, the Law
 14 Offices of James L. Pagano by James L. Pagano, Esq.¹; Scott Ward, Esq., of Germain and Young,
 15 a California-licensed attorney retained by Creditor, Stanley Flake, as the Trustee of the F. Hanse
 16 Trust ("Flake"), monitored the hearing, on behalf of that Creditor.²

17 This Court, having received and reviewed the proposed Disclosure Statement offered by
 18 DEBTOR as well as the Plan, having signed and issued an order on this day denying, with prejudice
 19 to its being re-filed, the Motion seeking approval of the said Disclosure Statement, and determining
 20

21 ¹ Mr. Pagano was admitted to practice *pro hac vice*, in this case only, by order of this Court
 22 dated November 9, 2001. He was permitted to practice without having to associate Nevada-admitted
 23 counsel pursuant to Local Rule, IA 10-2(c), on the same day.

24 ² The Court was made aware by Mr. Ward that he is a licensed by the State of California to
 25 practice law in that state's courts. Therefore, in order to appear in this matter, pursuant to the rules
 26 of this Court, specifically LR 1A 10-2, Mr. Ward is required to file a verified petition to be admitted
 27 to practice in this case, *pro hac vice*. Thereafter, before he appears in this Court, that Petition must
 28 be considered and granted by the Court. (*Id.* sub.(b).) Mr. Ward confirmed that he has not yet filed
 such a Petition. Therefore, he could not be permitted to formally appear and argue for to do otherwise
 would have served to violate this Court's rules of practice. (*Id.*, sub (a) and (b)). Therefore, he was
 permitted to be present, telephonically, at the hearing to merely monitor the arguments made.

1 that no purpose can be served by the maintenance of this case, as the Court has found that there is
 2 no reasonable possibility that DEBTOR can re-organize and there is no evidence that DEBTOR can
 3 propose a confirmable plan,³ this Court now rules as follows:

4 Good cause therefor having been demonstrated, this Court hereby GRANTS this Motion to
 5 Dismiss, finding that this case, from its beginning, has been utilized by DEBTOR as a litigation
 6 tactic through which DEBTOR has attempted to receive a result that he could not obtain in any other
 7 forum, a successful collateral attack against a judgment entered against DEBTOR and which has
 8 been final for seven years, including the order denying motion to vacate that judgment brought by
 9 DEBTOR, the denial of which motion by the Court that entered the referenced judgment has been
 10 final for more than six years. For this reason and for the reasons more particularly set forth in the
 11 referenced "Order Denying Approval of Proposed Disclosure Statement, *With Prejudice to its Being*
 12 *Re-Filed*" (see footnote 1), the Court finds that this case is utterly and completely without merit and
 13 is, for that reason, DISMISSED, at this time, with prejudice to its being re-filed.

14 The Court further incorporates herein, by reference, all of the oral findings that he made at
 15 the hearing hereof on March 11, 2002 that are consistent herewith, as well as those consistent oral
 16 findings made at the prior hearing on the Motion which occurred on February 1, 2002, and states that
 17 such oral findings and conclusions are made pursuant to Federal Rule of Bankruptcy Procedure, Rule
 18 7052, which incorporates Federal Rule of Civil Procedure, Rule 52, into bankruptcy cases.

19 In addition to the foregoing, as a consequence of the granting of the Motion, the objections
 20 timely filed by MALONEY to DEBTOR's claim of an exemption, pursuant to Nevada's homestead
 21 exemption law (Nevada Revised Statutes, §21.090(m)), involving that real property more commonly
 22 known as 321 Ski Way Blvd., unit 83, Incline Village, NV, have been rendered moot. Thus, the said
 23 objections are not subject to the absolute deadline established by the decision in *Taylor v. Freeland*
 24 *& Kronz*, 503 U.S. 638, 643-644, 112 S.Ct. 644, 118 L.Ed 2d. 280 (1992). The Court expressly finds
 25 that these objections were timely asserted and the Court, by its reference to this issue in this Order,
 26

27
 28 ³ See "Order Denying Approval of Proposed Disclosure Statement, *With Prejudice to Its Being*
Re-Filed", and the findings which are fully incorporated by reference therein as though set forth. That
 Order and the said findings are also fully incorporated herein and made a part of this Order as well.

1 intends to protect MALONEY should the dismissal memorialized herein be reversed on appeal by
2 a Court having jurisdiction to consider this Order, and the case, thereafter, is permitted to proceed.

3 In addition to the foregoing, the Court specifically finds that MALONEY have also timely
4 filed objections to the dischargeability of certain identified claims owing to them by DEBTOR. The
5 Court determines that the said objections to dischargeability are not subject to the absolute deadline
6 set forth in the decisions of the United States Supreme Court, but the deadline for filing such
7 dischargeability matters is hereby stayed, as moot, by the issuance of this Order, pending any reversal
8 thereof by a court having jurisdiction to consider this Order.

9 Dated: May 23, 2002

10 
11 Honorable Gregg W. Live
Judge of the United States Bankruptcy Court

12 Approved as to Form and Content:

13 LAW OFFICES OF DEL HARDY & ASSOCIATES

14
15
16 by: Del Hardy, Esq., Attorneys for Debtor,
Albert G. Garland

17 UNITED STATES TRUSTEE, DISTRICT 17,

18
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20 by: Nicholas Strozza, Esq.,
Assistant United State Trustee

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1 issue in this Order, intends to protect MALONEY should the dismissal memorialized herein be
2 reversed on appeal by a Court having jurisdiction to consider this Order, and the case, thereafter, is
3 permitted to proceed.

4 In addition to the foregoing, the Court specifically finds that MALONEY have also timely
5 filed objection(s) to the dischargeability of certain identified claims owing to them by DEBTOR.
6 The Court determines that the said objection(s) to dischargeability is(are) not subject to the absolute
7 deadline set forth in the decisions of the United States Supreme Court, but the deadline for filing
8 such dischargeability matters is hereby stayed, as moot, by the issuance of this Order, pending any
9 reversal thereof by a court having jurisdiction to consider this Order.

10 Dated: April __, 2002

11
12 The Honorable Gregg W. Zive
Judge of the United States Bankruptcy Court

13 Approved as to Form and Content:

14 LAW OFFICES OF DEL HARDY & ASSOCIATES

15
16
17 by: Del Hardy, Esq. Attorneys for DEBTOR,
Albert G. Garland

18 UNITED STATES TRUSTEE, DISTRICT 17,

19
20 Nicholas Strozza
21 by: Nicholas Strozza, Esq.,
Assistant United State Trustee

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ORDER GRANTING DISMISSAL OF CHAPTER 11 CASE, WITH PREJUDICE TO ITS BEING
REFILED, AND STAYING, AS MOOT, OBJECTIONS TO DISCHARGEABILITY OF CERTAIN
DEBTS OWED BY DEBTOR AND DEBTOR'S CLAIM TO A HOMESTEAD EXEMPTION

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B

FAULTY SALE NOTICE

1 Recording requested by Albert G. Garland

2
3 Regarding Property:

4
5 APN: 126-120-18

6
7 Address: 321 Ski Way # 83
8 Incline Village NV. 89450
9

10
11
12 Notice Is Hereby Given That:

13
14 The Trustee Sale # U09045259N, conducted in Reno, Nevada, on June
15 12, 2002, was Faulty and Invalid for the following reasons:

- 16
17 1. Albert G. Garland, an owner of the subject property was in a Chapter 11
18 Bankruptcy, at the time, as he had not received the notice of any discharge,
19 and for that reason the sale was held prior to the 10 day waiting period,
20 after a bankruptcy discharge as required by Federal Statute.
21 2. Homeside Lending, did accept payments on loan number 2728897 in January
22 and February of 2002, some five months after the notice of default and
23 election to sell was recorded on April 24, 2001.
24 3. Lender failed to provide an accurate accounting of funds required from the
25 borrower, to cure or reinstate the loan, as requested by Albert G. Garland
26 on April 23rd 2002.
27 4. Failure to notify junior lien holders, three in number, of the required funds
28 to cure the default, also the time and place of the sale.
29 5. According to bidders present at the sale, there were a number of
30 inappropriate actions by the crier, including but not limited, to not holding
31 an open and thorough sale.
32

33
34 I do swear that the above statements are true and correct to the best of my
35 knowledge,
36

37
38
39  6/19/02
40 Albert G. Garland

41 321 Ski Way Blvd. Number 83
42 P.O. Box 5373

43 Incline Village NV. 89450
44 775 831-8754
45

46 Witnessed: _____

MAIL TO BOX 5373
INCLINE VILLAGE NV. 89450-5373

ACKNOWLEDGEMENT FORM - NRS.240.166

STATE OF

ACKNOWLEDGEMENT
Navadev

COUNTY OF

Washoe

SS:

This instrument was acknowledged before me on

June 19

2002, by

Albert George Barland

M. Jessie Teller/Carol Clark



Notarial Officer - State of Nevada
Deputy Court Clerk-Inline Justice Court
Washoe County
NRS 240.1635; 4.350

SIGNATURE OF NOTARIAL OFFICER

TITLE

Court Clerk

DOC # 2701331

05/19/2002 10:01A Fee:15.00

BK1

Requested By

ALBERT G GARLAND

Washoe County Recorder

Kathryn L. Burke - Recorder

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